

DELTA PROTECTION COMMISSION

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FINAL

Minutes of the Delta Protection Commission Meeting

Thursday, September 26, 1996

1. Call to Order/Roll Call.

The meeting was called to order at 6:45 p.m. Commissioners present were: Vice-Chair Fargo, Commissioners Broddrick, Calone, Curry, Ferreira, Freeman, Herendeen, Mello, Murphy, Nottoli, Potter, Salmon, Sekelsky, Simas, Thomson, and Yates. Commissioners absent were Chairman McCarty, McGowan, and Torlakson.

2. Public Comments.

There were no public comments.

3. Minutes of July 25, 1996 Meeting.

On a motion by Commissioner Herendeen, and a second by Commissioner Simas, the draft minutes were approved.

4. Chairman's Report.

Vice-Chair Fargo reported that a closed session had been held before the regular meeting and that no decisions had been made in the closed session.

Vice-Chair Fargo announced that Item 11, the vote on the Proposed Regulation, would be moved up on the agenda to follow Item 6, the Executive Director's Report.

Vice-Chair Fargo stated that the next meeting of the Commission is scheduled for Thursday, October 24, 1996 at 6:30 p.m. in the Jean Harvie Community Center. A meeting of the Budget, Finance and Administrative Subcommittee is scheduled for Thursday October 3, 1996 at 4:00 p.m.

Vice-Chair Fargo announced upcoming events on the Delta including the State of the Estuary Conference on October 10, 11 and 12 at the Presidio in San Francisco; the Antioch River Town Days on September 27 and 28; and the Rio Vista Bass Derby on October 13, 14, and 15.

Vice-Chair Fargo stated the Legislation approving the Commission's two year time extension was APPROVED by the Legislature and signed by the Governor on September 15. She said funds for the second half of the fiscal year have already been included in the State budget. On behalf

of the Commission, letters were sent to each of the five legislators that served as sponsors of the Legislation thanking them. The time extension will kick off a series of actions including election of new water district representatives, and a revised budget and work program for the full fiscal year. Vice-Chair Fargo thanked all who supported the Commission to date, and said the Commission and the public will continue to support the Commission and its work in the next two years.

Vice-Chair Fargo said that a new Director of Boating and Waterways was recently appointed and sworn in, Ronald Del Principe, who has reappointed Bill Curry to represent the Department.

5. Attorney General's Report.

Mr. Frank noted the closed session notice had been revised prior to tonight's meeting. He said that Attorney General's office had filed the amicus brief on the flood case on behalf of Delta Protection Commission.

6. Executive Director's Report.

Ms Aramburu went over final budget numbers and stated that the approved budget included funding for the Commission for the full fiscal year; the total granted is \$288,000--86 thousand from ELPF; 101 thousand from Harbors and Watercraft; and 101 thousand from Delta Flood Protection Fund.

Commissioner Potter said that the pending projects memo should be amended to indicate the public workshops and public hearings on the Interim South Delta Project.

Ms Aramburu stated that the Commission continues to work with Berkeley and Teale on the GIS project. She said that work is being done so that Teale can take over management of the homepage and that monthly agendas and minutes will be added and the look and performance will be better. She said that work is underway with the money in the existing contract with Teale.

She spoke about the recreation study and Dave Cox at Department of Parks and Recreation. She said that 10,000 letters have been mailed to the boater list; and 10,000 letters have been mailed to the angler list. The actual questionnaires will go out the first week in October.

Ms Aramburu said that the balance of the 10% Penalty Fund for the new fiscal year is \$1032. She said the 10% penalty will be dropped after the first of the year as directed in the amended legislation.

Ms Aramburu said CALFED released its Phase I Final Report, she said she would circulate a copy, she said she would send copies to those who were interested. She said that CALFED has set up a number of committees to help develop information to become part of the project descriptions to be included in the environmental document. She said that the project descriptions selected for review in the programmatic environmental document are general. That these committees, working with a number of consultants and CALFED staff, are helping develop more specific proposals. She stated that she has been participating on the Levee Committee, and the Subsidence Subcommittee. She believes these are key issues of concern to the Commission.

She said that US Fish and Wildlife Service's Fall Flight Forecast estimates 83 million ducks will migrate along the Pacific Flyway this fall and winter.

Ms Aramburu said that Commissioner Herendeen forwarded an article about the currently passed legislation about *Egeria densa*. The bill includes one million dollars for eradication of the weed and \$100,000 for research.

She stated that the Striped Bass index is at the lowest level in 25 years; the reason for the decline is not yet fully understood and that, the Delta smelt index is UP; highest since 1994, but still below 1970s and early 1980s levels. Until 1983 the index was 19.5; in the period 1983 to 1992 the index was 2.4; and in 1996 the index was 11.1.

She said four local governments have completed their general plan amendments:

San Joaquin County:	July 9
Contra Costa County:	July 23
Sacramento County:	September 11
City of Rio Vista:	August 15

Ms Aramburu said San Joaquin, Solano, and Yolo Counties are continuing to work on local ordinances.

Ms Aramburu said that she attended the "California Assembly Process" on July 24 through 26; this year's topic was Bay Delta Institutional Issues. The results are passed onto policy makers and decision makers.

Commissioner Potter noted that although the Delta smelt index had been higher earlier this year, the fall index is extremely low, possibly due to toxics or due to the PG&E power plant.

11. Commission Consideration of the Adoption of the Utilities and Infrastructure P-3 in the Form of a Regulation as an Amendment to the "Land Use and Resource Management Plan for the Primary Zone of the Delta":

Ms Aramburu said this is the scheduled vote on readoption of P-3 as a regulation. This policy was included in the original Plan adopted in February of 1995; the Commission was sued and lost when the Court agreed the policy was a regulation. The policy was then set aside. The Commission directed staff to proceed with adoption of P-3 as a regulation. The Commission has followed the required sequence of activities, held the required public hearings, staff has prepared responses to the environmental issues raised, and the Commission is scheduled to vote on the matter. Ms Aramburu said the consideration is not a public hearing, so discussion is limited to questions to staff and Commissioner comments.

Ms Aramburu said the Commission has received the revised staff report dated September 13, 1996 which reviews the process to date and a supplemental section with environmental comments and responses which was mailed separately. She noted that the Commission had received a letter from Craig Johns which was distributed at the meeting and that the Commission's legal counsel had reviewed the letter and believed there was no legal reason why the Commission could not vote on the matter at the meeting. The September 13, 1996 staff report summarizes comments received in the review process and summarizes environmental comments made in the process. She noted that at the close of the public hearings, Commissioners received copies of all the written correspondence and minutes of all the public hearings. The summaries and responses attached to the staff report address the environmental points only because, after consultation with Office of Administrative law, staff determined that these were the only comments and responses needed before the Commission acts. She added that all other comments will be responded to as part of the final submittal to Office of Administrative Law after the Commission has acted. She said the staff recommendation is to adopt the proposed language with no changes and the action tonight would be adoption of the draft resolution, which encompasses three actions: approval of the environmental comments and responses; a determination that there will be no significant environmental effect; and adoption of the language itself. She noted a one sentence amendment that is proposed for inclusion: "The Delta Protection Commission has reviewed and hereby approves the summaries of and responses to environmental comments and addendum thereto", to be inserted as item number one, and the other items renumbered, on page A-12.

Commissioner Simas moved the motion, seconded by Commissioner Murphy.

Commissioner Curry said he had attended all the meetings and reviewed all the relevant material even though he has not been formally on the Commission for the last few months. He stated he is prepared to vote on the matter.

Commissioner Potter commented that he had read the staff update and that it was well done.

Vice-Chair Fargo thanked staff for the work on the matter and called for a roll call vote. The roll call vote was unanimous approval.

7. Pending Projects Memo.

Commissioner Potter stated that there would be workshops and public hearings in November for the Interim South Delta Program.

8. Staff Briefing on Status of San Luis Drain and Associated Projects.

Ms Aramburu said that at the July meeting, there was a public comment which resulted in the Commission asking for an update on the San Luis Drain project. There has been only minimal activity regarding the "long-drain"; the State Water Board and Bureau of Reclamation have been negotiating the terms of an agreement to reimburse the State Water Board for the costs of preparing an environmental document.

She said that you may recall last year the Bureau approved a project separate project, the Grasslands Bypass Project, to divert agricultural drain water from Salt and Mud Sloughs into the existing portion of the San Luis Drain. This program has not started and will not start until the monitoring program has been approved. To date, there has been release of what was called "groundwater" from the San Luis Drain. This was water that had accumulated in the Drain over the last several years; that water was released in April. Staff recently received the required monitoring reports and the Regional Board rescinded the waste discharge requirements for that release on September 20. Finally, a Briefing on the Grassland Bypass Project was held Tuesday, September 24 in Oakland. The monitoring program will require monthly reports, quarterly reports, and annual reports. The project was approved for two years, with a possible approval of three additional years.

Commissioner Potter added that the San Joaquin River Management Council developed a real time monitoring program on the river to monitor water quality in the river, with an Internet type connection. The original grant funds will expire this month, but new financial support has been developed to continue this monitoring program.

Vice-Chair Fargo asked for public comments; there were none.

9. Briefing on Regulatory Issues Associated with Levee Maintenance.

Ms Aramburu gave a brief update to the Commission on regulatory issues associated with levee maintenance in the Delta. She said that the Corps is circulating for reauthorization, the nationwide permits; NWP 3 and 13 are used for levee maintenance; no changes are proposed. The permits would be reissued for five years in January of next year.

She stated that the State Lands Commission recently adopted a new memorandum of understanding that would be used to prepare agreements with RDs to simplify dredging material from State-owned lands for levee maintenance work. You have a copy in your packet; There would be a small fee for processing the agreement; no royalty for the dredged material; and the agreement would be for 49 years or until the Corps permits are rescinded. Commissioner Potter forwarded a letter thanking State Lands for the new memorandum of agreement.

She said that the Corps General Permit 14 was reissued last December; as a condition of issuing that general permit which allows dredging for levee maintenance, the federal fisheries agencies developed periods when in-water work can take place without additional review by the fisheries agencies under the endangered species act; for most of the Delta that period is six weeks: August 1 through September 14, work can go past that date under certain conditions, until November 30. There have been concerns raised that the six week period is too short and there are discussions underway of how and under what conditions the work windows could be "opened". She said these discussions are taking place in the Delta Levees and Habitat Advisory Committee.

Finally, the CVRWQCB staff is preparing to release three General Orders which set testing requirements for Delta dredging projects. The three orders relate to the sizes of the projects: very small, less than 5,000 cu yards would be exempt; medium and large projects would require a series of tests. Again, there are discussions about the costs and times associated with the proposed testing, and there is a hope that there can be a specific order developed for dredging for levee maintenance.

Commissioner Potter asked if Tom Zuckerman could comment.

Vice-Chair Fargo expressed concern about emergency repair of levees in the winter, high water season.

Ms Aramburu noted that the Levee Subcommittee is scheduled to meet before the next Commission meeting.

Tom Zuckerman said it is a matter of great frustration to sit in the Resources' Secretary's committee which was appointed close to five years ago to try to streamline the issues that existed at that time between the Department of Water Resources and the Department of Fish and Game and a lot of progress was made; he complemented the Department of Fish and Game and their attention to it. He said the problem has just blossomed there's a great number of interested agencies with overlapping concerns and its become very, very difficult to get anything through this process. The two issues that have been of significant concern to me and others have been the inability to use the information that is being developed through the real time monitoring program and bring those to bear on the presence or absence of endangered species at different times of the year. The original concept with setting up this work window was that would be the clear shot, and then based on other relevant information the windows could extend into a larger construction season. He said he's not clear what happened but the Corps and its permit process began to incorporate the window into other permits being issued and then the fisheries agencies became rather rigid about what they would consider or not consider. What we have effectively ended up with is at least a seven month period from the first of December to the end of June where no work of any nature in the shallow water areas of the Delta is permissible; there isn't even any consideration of extending the windows into that period. There has been a great reluctance to look into the other parts of the year. By contrast, as far as Delta smelt are concerned, they are relying entirely upon the real time monitoring information to determine if its OK to go ahead and export a couple hundred extra acre feet of water. Its good enough for that kind of project, but not good enough for monitoring the activities of a dredger in the Delta moving a few cubic yards an hour. Its very frustrating.

Mr. Zuckerman said the other issue has to do with the attitude of the Regional Water Quality Control Board. The constituent regulations that the Board was prepared to apply to sewage sludge deposition in various places had levels from 20 to 50 times higher that the levels the Board is preparing to place upon dredger spoils. We are talking about a dredger taking a scoop of material from the river bottom and putting it on the adjacent levee with some of the material draining back into the Delta. That is being looked at in an entirely different way than the

EPA has authorized for disposal of sewage sludge. There is a lot of inconsistency. He said he is concerned about the inability to get permits on a relatively inexpensive basis is discouraging reclamation districts from carrying out necessary maintenance work; work that the districts are prepared to do. He said the people that supply the equipment and the employees to do this work are disappearing because there is not enough work to keep those people in the Delta. He said if there is not enough work to keep that equipment and staff in the Delta, they will not be available in the event of an emergency. He added that the CALFED process envisions doing a massive amount of levee work and habitat work; but the people and equipment to do that work are disappearing. We should try to make the process simple and workable to do the necessary maintenance work so we have the ability to respond to larger projects when they come up and to respond to emergencies.

In response to Vice-Chair Fargo's question, Mr. Zuckerman said Commissioner Potter had asked that NMFS and Fish and Wildlife Service come to the Secretary for Resource's meetings to help resolve these issues.

Vice-Chair Fargo suggested considering additional tasks to assist with resolution of these issues.

Commissioner Mello said there is a current problem on Tyler Island that has received a permit; the \$250,000 project will turn into a \$400,000 project due to the testing requirements. Tyler suggested using tests performed by Department of Water Resources, Tyler had to find the test results, has submitted they for review, but now three months have passed with no response.

Vice-Chair Fargo suggested considering a joint meeting with the Regional Board.

Commissioner Mello suggested the Regional Board should keep a data base and exempt areas with no identified problems.

Vice-Chair Fargo suggested staff continue to develop ideas on how to resolve the problems.

Commissioner Calone said the districts have been created by digging adjacent dirt and using that to create the levees. He said there are no borrow areas left from recent history; the areas being excavated are very clean. He said he does not understand why the Regional Board is concerned about material excavated from the water getting back into the water.

Ms Aramburu said Commissioners Potter and Brodderick and Mr. Zuckerman have participated for many years; the original challenges have been met. The problems now are new problems associated with endangered species and the dredging issues. She said she continues to help that group by preparing agendas and minutes.

Commissioner Ferreira said on Grand Island there are project levees and they are also frustrated about getting approvals to do work to protect the 25,000 acres and a town.

Commissioner Brodderick supported the idea of asking the Regional Board to the Delta, give them a tour and show them the challenges facing the Delta levee. He agreed that there should be a monitoring inventorying program to catalog all the past testing, then there could be a consensus building process to address these issues. He suggested contacting Bill Crooks, and start to develop common objectives. He said if the restrictions are precluding regular maintenance, and work is only carried out in emergencies, that is a very negative situation.

Vice Chair Fargo suggested initiating discussion with the Regional Board staff and asking for the Board or a subcommittee to meet with the Commission or a Subcommittee to start a dialog.

Commissioner Potter suggested the Levee Subcommittee address these issues, and AB 360.

10. Report on End of the Legislative Session.

Ms Aramburu said that this memo was first started two years ago at the start of the two-year legislative session. We have followed-up on all the matters introduced at that time. In addition, we added some of the key legislative matters from the current legislative year.

Under direction of Chairman McCarty, I am going to agendize consideration of SB 900, now known as Prop 204, the 995 million dollar bond act scheduled for the November ballot.

Commissioner Brodderick asked Mr. Frank about the ability of State employees that are Commissioners to take a position.

Mr. Frank said he would research that topic and further inform the Commission before the next meeting.

12. Commissioner Comments.

Commissioner Ferreira asked that the Commission make comments, recommendations, and look into the viability of the Delta concerning the CALFED's various projects and what impact that would have on the communities in the Primary Zone and to look into what the Delta gives back to the State in the form of revenues, the Delta's economic stability. If there are changes, how would those affect the communities and the economic welfare of those included in the rural area in the Primary Zone of the Delta.

Commissioner Murphy commended staff for how they handled the P-3 issue, keeping the Commission well informed and preparing complete, understandable staff work.

Commissioner Simas agreed, and said they short time needed to consider the matter should indicate the seriousness of the Commission and how they propose to consider this issue.

Vice-Chair Fargo announced that the City of Sacramento has started work on the new flood control wall and a new dock project to extend the promenade along the south waterfront.

Commissioner Herendeen submitted an article about the abandoned vessels issue.

Commissioner Potter suggested that the Commission consider a resolution or letter of appreciation for Assemblyman Tom Hannigan at the next meeting.

13. Adjourn.

The meeting was adjourned at 8:45 p.m.